

## REMARKS

### *The Pending Claims*

Claims 1-35 are currently pending. Claims 36-38 are withdrawn. The pending claims are all directed toward a molding apparatus having, *inter alia*, a locking mechanism that secures a cover in a closed position for a predetermined time. Reconsideration of the pending claims is respectively requested.

### *Summary of the Office Action*

The Office Action sets forth a restriction requirement and requests affirmation of the provisional election of claims 1-35 earlier made on March 3, 2004. Concerning the Information Disclosure Statement submitted on March 12, 2002, the Office Action states that, because copies of the non-patent references listed therein were not submitted, those non-patent references have not been considered.

Regarding the claims, the Office Action rejects claims 1-3, 20-21, 24, 26-33, and 35 under 35 U.S.C. § 102 as anticipated by U.S. Patent No. 4,188,009 (Gillespie). The Office Action further rejects claims 1, 4-9, 14, and 33 as anticipated by U.S. Patent No. 4,229,548 (Saffer et al.). Claims 1-8, 10, 14-15, and 22-23 stand rejected as anticipated by U.S. Patent No. 5,954,115 (Lebensfeld et al. '115).

The Office Action also rejects claims 11, 16, 18, and 34 under 35 U.S.C. § 103(a) as obvious over either Gillespie, Saffer et al., or Lebensfeld et al. '115, in view of U.S. Patent No. 5,453,000 (Lebensfeld '000). Claims 12 and 13 stand rejected as obvious over Lebensfeld et al. '115 in view of Lebensfeld '000 and in further view of U.S. Patent No. 5,538,457 (Deal). Claim 19 is rejected as obvious over the combination of Lebensfeld et al. '115, Lebensfeld '000, and U.S. Patent 3,625,197 (Pirker). Claim 17 is rejected as obvious over the combination of Lebensfeld et al. '115, Lebensfeld '000, and U.S. Patent 4,224,814 (Bechtiger). Lastly, the Office Action rejects claim 25 as obvious over Lebensfeld et al. '115 in view of Lebensfeld '000 and in further view of U.S. Patent No. 4,293,899 (Sanner).

### *Discussion of the Restriction Requirement*

Applicant affirms, with traverse, the provisional election of claims 1-35 made during the telephone conversation with Applicant's representative John Augustyn on March 3, 2004. The provisional election with traverse was made in response to the restriction requirement between Group I (claims 1-35) directed to a molding apparatus and Group II (claims 36-38) directed to a molding method.

Concerning the traversal of the restriction requirement, Applicant submits that the Office fails to satisfy the requirements for a proper restriction requirement. There are two

criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent or distinct as claimed, and (ii) there must be a serious burden on the examiner if restriction is not required. See, e.g., M.P.E.P. § 803. Consequently, as set forth in M.P.E.P. § 803, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, *even though it includes claims to distinct or independent inventions*” (emphasis added).

The Office has failed to allege or establish that examination of all of the claims would constitute a serious burden on the Examiner if restriction were not required. As such, Applicant respectfully requests the withdrawal of the restriction requirement and consideration of the claims of Group II, in addition to those of elected Group I.

*Discussion of the Information Disclosure Statement*

With respect to the Information Disclosure Statement, the Office Action stated that “copies of the non-patent literature documents have not been provided”. The non-patent references were presented and applicant received a return receipt post card from the Patent and Trademark Office acknowledging receipt of the references. A copy of the post card is enclosed. Along with this Response, Applicant submits a duplicate copy of page 3 of Form 1449 that lists the non-patent prior art references which were previously presented on March 12, 2002. Applicant also submits duplicate copies of each of the non-patent references that are cited on page 3 of Form 1449. Consideration of the non-patent references is respectfully requested.

In addition, Applicants did not receive a copy of page 2 of the 1449 with the Examiner’s initials. Page 2 included U.S. patent references. Applicants request a copy of page 2 with the Examiner’s initials. In the event that page 2 has been misplaced, Applicants enclose a duplicate copy.

*Discussion of the Abstract*

Applicants have amended the Abstract as suggested by the Office Action.

*Discussion of the Claim Rejections*

Applicant respectfully submits that the anticipation and obviousness rejections of the pending claims are improper. To anticipate a claim, a single prior art reference must teach each and every element of the asserted claim. See, e.g., M.P.E.P. § 2131. To reject a claim as obvious, the reference or references as combined must teach or suggest all the claim limitations. See, e.g., M.P.E.P. § 2143. Additionally, an obviousness rejection of a claim

requires both a motivation or suggestion to modify or combine the reference or references and a reasonable expectation of success. See, e.g., Id.

Regarding the rejection of claim 1 as being anticipated by Gillespie, Applicant notes that Gillespie fails to teach “a locking mechanism that secures the cover in its closed position for a predetermined time,” as is explicitly recited in original claim 1. The Office Action alleges that the “detachable top cover (12) is locked for a predetermined time that the molten crayon material is being melted and poured into said mold to form a crayon.” However, the Gillespie reference contains no indication, nor does the Office Action point to any, that the top section (12) of Gillespie *is actual locked* to secure itself in a closed position at any time. All that is disclosed in Gillespie about the top section is that the top section is removable and that the top section may be formed from sheet metal. See, e.g., col. 2, ll. 31-33; col. 3, ll. 28-31. Moreover, no structure is disclosed in Gillespie that corresponds to a “locking mechanism,” as is specifically claimed in claim 1. Accordingly, Gillespie fails to anticipate independent claim 1.

Regarding the anticipation rejection of claim 1 by Saffer et al., Applicant submits that the cover (14) of Saffer et al. does not have “an open position and a closed position” as is explicitly claimed in claim 1. Instead, the cover of Saffer et al. is tightly joined to the base such that the operating machinery is tightly enclosed. See, e.g., col. 2, ll. 12-17; col. 3, ll. 19-23. Access to the internal machinery occurs by way of either a slideable mold carrier (44) or a loading mechanism (68) both of which operate while the cover (14) remains tightly in place. See, e.g., col. 2, ll. 37-43; col. 3, ll. 37-63. Moreover, Saffer et al. fails to disclose any structure that corresponds to a “locking mechanism that secures the cover in its closed position for a predetermined time.” Because the Saffer et al. reference fails to teach a cover having an open and closed position or a locking mechanism that secures the cover for a predetermined time, it cannot anticipate independent claim 1.

Concerning the anticipation rejection of claim 1 by Lebensfeld et al. ‘115, Applicant submits that the temperature responsive interlock (73) disclosed in Lebensfeld et al. ‘115 is wholly unlike the claimed “locking mechanism that secures the cover in its closed position for a predetermined time.” The temperature responsive interlock (73) of Lebensfeld et al. ‘115 is entirely dependent upon the temperature of the crucible. See, e.g., col. 9, ll. 33-39. Moreover, the temperature of the crucible is controlled by an on-off switch attached to a heating device 62 which must be activated by an operator. See, e.g., col. 7, ll. 51-65. Neither the temperature responsive interlock nor switch-controlled heating device are *time-dependant*. As such, the temperature responsive interlock of Lebensfeld et al. ‘115 does not secure the cover in a closed position for a predetermined time, but only over a predetermined

temperature. Furthermore, since the temperature of the device is determined by the operator-controlled switch that can be left on indefinitely, the temperature responsive interlock does not secure the cover for a predetermined time. Therefore, Lebensfeld et al. '115 fails to anticipate independent claim 1.

Applicant also contends that the Lebensfeld '000, which the Office Action alleges discloses a timer, would not render claim 1 obvious if taken in view of either Gillespie, Saffer et al., or Lebensfeld et al. '115. First, the timer of Lebensfeld '000 is disclosed as functioning to cut-off power to the heater (50) after a pre-set time, but does not engage the safety lid (70) whatsoever. See, e.g., col. 4, ll. 51-58. In fact, the safety lid (70) of Lebensfeld '000 is prevented from being pivoted open by the mechanical positioning of a safety tab (47) that engages a reciprocal shuttle lever (46) and shuttle frame (34), a feature whose operation is independent of time. See, e.g., col. 6, ll. 30-36, 59-51. An additional temperature dependent safety feature is disclosed in Lebensfeld '000 which includes a temperature responsive thermal switch (133) that interacts with a lock pin (134) to prevent lifting of a safety lid (130) over a given temperature range. See, e.g. col. 8, ll. 15-40. As such, Lebensfeld '000 fails to teach any structure corresponding to a "locking mechanism that secures the cover in its closed position for a predetermined time."

As mentioned above, the time-dependent locking mechanism for securing the cover in its closed position is also not taught in either Gillespie, Saffer et al., or Lebensfeld et al. '115. Specifically, Gillespie fails to disclose any locking of the cover while Saffer et al. fails to disclose a cover having opened and closed positions or a cover that can be locked into a closed position for a predetermined time. Regarding a potential combination of Lebensfeld et al. '115 and Lebensfeld '000, Applicant submits that there exist no motivation to combine these references in order to arrive at the claimed invention. Particularly, Lebensfeld et al. '115 teaches a temperature responsive interlock for securing the cover in a closed position while Lebensfeld '000 discloses a safety tab that is mechanically positioned to prevent the cover from being opened. There is no motivation or suggestion to discard the temperature responsive interlock or mechanical safety tab and replace them with a "locking mechanism that secures the cover in its closed position for a predetermined time." For example, the notion of temperature responsive interlocks taught in Lebensfeld et al. '115 and Lebensfeld '000 is contrary to the time-dependant locking mechanism of claim 1. As such, Applicant submits that claim 1 is not rendered unpatentable over potential combinations of Gillespie, Saffer et al., Lebensfeld et al. '115, and Lebensfeld '000.

Applicant further submits that the various anticipation and obviousness rejections of dependent claims 2-35 should be withdrawn. Claims dependent upon a claim that is not

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anticipated by a reference cannot be rejected under 35 U.S.C. § 102(b) and claims dependent upon a claim that is not obvious cannot be rejected under 35 U.S.C. § 103. See, e.g., *RCA Corp. v. Applied Digital Data Systems*, 221 U.S.P.Q. 385 (Fed. Cir. 1984); *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Because independent claim 1 is not anticipated or rendered obvious by Gillespie, Saffer et al., Lebensfeld et al. '115, and Lebensfeld '000, respectively, dependent claim 1 should therefore be allowable.

*Conclusion*

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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Date: June 24, 2004